

³ The Board notes that following the October 24, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability from work for the period September 25, 2014 through July 14, 2015 causally related to the accepted employment conditions.

FACTUAL HISTORY

On April 19, 2004 appellant, then a 34-year-old city mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed metatarsalgia and chondromalacia of the patella due to factors of her federal employment, including continuous walking, standing, stair climbing, and carrying a mail satchel. She noted that she first became aware of her condition and its relation to her federal employment on February 6, 2004. On the reverse side of the claim form, appellant's supervisor noted that she was placed on limited duty on February 7, 2014 with restrictions of three hours of continuous walking. On October 5, 2007 OWCP accepted her claim for bilateral plantar fibromatosis and bilateral tarsal tunnel syndrome.

On August 19, 2014 Dr. Shari L. Kaminsky, a podiatrist, provided permanent work restrictions for an eight-hour day consisting of intermittent walking for one hour, intermittent standing for two hours, and operating a motor vehicle for one hour. She also provided lifting restrictions of no more than 10 pounds.

In a December 16, 2014 form report, Dr. Kaminsky diagnosed plantar fasciitis as well as tarsal tunnel syndrome and opined that appellant was totally disabled from work from September 25, 2014 through January 9, 2015. She indicated that appellant could resume regular work on January 9, 2015.

On December 28, 2014 and January 9, 2015 appellant filed claims for compensation (Form CA-7) for total disability beginning September 25, 2014 through January 9, 2015.

In a January 16, 2015 development letter, OWCP advised appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence supporting her claim for total disability beginning September 25, 2014. OWCP further provided appellant with a questionnaire for completion and requested a report from her physician addressing the relationship between her disability and her employment injury. It afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated March 6, 2015, OWCP denied appellant's claim for a recurrence of total disability commencing September 25, 2014.

On February 29, 2016 appellant requested reconsideration of the March 6, 2015 decision and submitted additional evidence in support of her claim.

An August 20, 2014 electromyogram and nerve conduction velocity (EMG/NCV) study demonstrated bilateral tarsal tunnel syndrome, mild on the right, and moderate on the left.

In notes dated October 16 and November 18, 2014, Dr. Kaminsky found appellant totally disabled and released her to work without restrictions on November 3, 2014 and December 12, 2014, respectively. On January 29, 2015 she found appellant disabled from work for the period September 25, 2014 through March 2, 2015.

In a January 29, 2015 treatment note, Dr. Kaminsky diagnosed tarsal tunnel syndrome. She related that appellant felt her foot pain was extreme, but that she was spending very little time on her feet at work. Dr. Kaminsky noted pain with palpation of the base of the right second toe and the second metatarsal head as well as the right second intermetatarsal space. She also reported a positive Tinel's sign at the tarsal tunnel bilaterally, as well as pain upon palpation of the medial tarsal area, the flexor hallucis brevis, and the arch. Dr. Kaminsky found that she was experiencing chronic changes from her long-term tarsal tunnel syndrome and recommended a tarsal tunnel decompression. She noted that appellant was no longer taking prescribed pain medication, which had relieved some of her foot pain.

On February 13, 2015 Dr. Kaminsky completed a form report diagnosing tarsal tunnel syndrome and indicating that appellant was totally disabled from work through June 25, 2015. On March 2, 2015 she again found that appellant was totally disabled from work for the period September 25, 2014 through June 25, 2015.

On February 13, 2015 appellant responded to OWCP's development questionnaire and submitted additional medical evidence. She attributed her recurrence of total disability on September 25, 2014 to chronic changes from tarsal tunnel syndrome.

On May 6, 2015 Dr. Kaminsky performed a surgical right tarsal tunnel decompression.

Appellant provided notes beginning June 11, 2015 from Brian Harthill, a physical therapist.

On June 24, 2015 Dr. Kaminsky found that appellant was totally disabled from work for the period September 25, 2014 through September 1, 2015. In a follow-up note dated July 13, 2015, she indicated that appellant could return to light-duty work. Dr. Kaminsky found that appellant was totally disabled from work for the period September 25, 2014 through July 13, 2015. Through a separate July 13, 2015 form report, she found that she could returned to light-duty work with her prior restrictions.

On July 15, 2015 the employing establishment offered appellant a permanent light-duty position as an accounting support technician. Appellant accepted the position on that date.

In a February 22, 2016 attending physician's report (Form CA-20), Dr. Kaminsky diagnosed chronic changes from long-term tarsal tunnel syndrome, including EMG findings, a positive Tinel's sign, and musculoskeletal swelling. She checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by employment activities and listed walking, standing, and weight-bearing of postal equipment. Dr. Kaminsky found that appellant was totally disabled for the period September 25, 2014 through July 13, 2015.

By decision dated May 27, 2016, OWCP denied modification of the March 6, 2015 decision.

On May 23, 2017 appellant resubmitted her August 20, 2014 EMG study. She also provided a January 22, 2015 right foot magnetic resonance imaging (MRI) scan which demonstrated mild intermetatarsal bursitis situated between the heads of the second and third metatarsals.

On December 9, 2016 appellant provided additional physical therapy notes from Mr. Harthill.

In a note dated April 13, 2017, Dr. Kaminsky reviewed appellant's medical treatment for tarsal tunnel syndrome. She opined that tarsal tunnel syndrome was caused by overuse from walking, standing, or pedaling of an automobile for long periods of time. Dr. Kaminsky reviewed her MRI scan and noted that her symptoms of pain in the right second and third intermetatarsal spaces was consistent with pain that could radiate from tarsal tunnel syndrome. She noted that appellant did not have a neuroma or mass on MRI scan. Dr. Kaminsky provided her findings on physical examination including positive Tinel's sign of the tarsal tunnel, bilaterally, and pain upon palpation of the medial tarsal tunnel, flexor hallucis brevis, and the arch. She opined that appellant was having chronic changes from the long-term tarsal tunnel syndrome and that she believed that she had a neurological origin for her pain, which was why she recommended tarsal tunnel decompression. Dr. Kaminsky noted that during the period of disability from September 25, 2014 through July 13, 2015 that she was unable to alleviate her foot pain and felt that keeping her off work with rest and pain medication would help her functionally.

On May 24, 2017 appellant requested reconsideration of the May 27, 2016 decision.

By decision dated November 16, 2017, OWCP denied modification.

In an undated report, Dr. Kaminsky opined that appellant had experienced a spontaneous worsening of her work-related tarsal tunnel syndrome due to chronic changes that rendered her unable to work from September 25, 2014 until July 13, 2015. She noted that appellant had pain in the right intermetatarsal space and the right third intermetatarsal space that was consistent with radiating pain from tarsal tunnel syndrome. Dr. Kaminsky reported that on physical examination she had symptoms consistent with chronic worsening of her tarsal tunnel syndrome including pain upon palpation of the right second intermetatarsal space, and slightly to the right of the of the third intermetatarsal space, positive Tinel's sign of the tarsal tunnel, bilaterally, and pain upon palpation of the tarsal tunnel, flexor hallucis brevis, and the arch.

On September 27, 2018 appellant, through counsel, requested reconsideration.

By decision dated February 25, 2019, OWCP denied modification.

OWCP continued to receive medical evidence. In a report dated April 16, 2019, Dr. Kaminsky detailed appellant's medical history, including her surgery on March 25, 2015. She noted that appellant had persistent and worsening pain in her right foot. Dr. Kaminsky diagnosed unspecified mononeuropathy of the right lower limb.

On August 26, 2019 appellant, through counsel, requested reconsideration of the February 25, 2019 decision. She provided additional treatment notes from Dr. Kaminsky and Dr. Jerry M. Liddell, a podiatrist and associate of Dr. Kaminsky, dated July 14 through December 16, 2014. Counsel contended that Dr. Kaminsky's notes were sufficient to meet appellant's burden of proof to establish a recurrence of total disability on September 25, 2014.

On July 24, 2014 Dr. Kaminsky noted appellant's report of bilateral foot pain and that she had not sought treatment for several years. She recounted that appellant reported throbbing, shooting, radiating, burning, tingling, numbness, and stiffness in her feet, worse on the right. Appellant's pain continued to increase and was aggravated by walking and weight-bearing, but noted that she continued performing light-duty work. On physical examination Dr. Kaminsky noted no overt deformities and normal arch structure. She found pain upon compression of the common peroneal nerve bilaterally, tarsal tunnel bilaterally, and under the metatarsal heads one

through five, bilaterally. Dr. Kaminsky also found pain upon palpation of the heels plantarly bilaterally. She diagnosed chronic tarsal tunnel syndrome, chronic plantar fasciitis, and chronic ankle and foot pain. Dr. Kaminsky noted that appellant's physical examination was normal except for reports of pain, that her foot structure was good, and that she did not exhibit fat pad atrophy. She also reported that her neurological examination was normal, but recommended an EMG study.

On August 5, 2014 Dr. Liddell noted that appellant had been unable to work lately because of increased symptoms. On physical examination he found a positive Tinel's sign on the dorsal of her feet bilaterally which may be intermediate dorsal cutaneous nerve or deep peroneal nerve distribution. Dr. Liddell found a negative Tinel's sign over the tarsal tunnel bilaterally. He reported tenderness with palpation in the intermetatarsal spaces centrally with the most intense area being the second intermetatarsal space bilaterally.

In an October 16, 2014 treatment note, Dr. Kaminsky again recounted appellant's description of her foot pain. On physical examination, she found the same pain pattern as demonstrated on July 24, 2014. Dr. Kaminsky noted that appellant's EMG study showed tarsal tunnel syndrome bilaterally. She again reported that, other than pain, appellant's physical examination seemed to be very normal. Dr. Kaminsky found that compression around the tarsal tunnel was giving appellant pain at the ankle, heel, arch, and on the entire plantar surface of the feet bilaterally. She concluded that appellant had failed conservative care and needed to consider surgical correction.

On November 18, 2014 Dr. Kaminsky reported that appellant had injured her right second toe on a hard object one month earlier. She found that appellant had torn the dorsal ligament of the distal interphalangeal joint of the right second toe. Dr. Kaminsky examined appellant on December 16, 2014 and noted that she had traumatically torn a ligament in the dorsal capsule of her right second toe. She opined that appellant's problem was not caused by the injury to the right second toe. Dr. Kaminsky recommended further electrodiagnostic testing to ensure that she was not overlooking secondary signs of tarsal tunnel syndrome or capsular injury the right second metatarsal phalangeal joint.

By decision dated October 24, 2019, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work when a light-duty assignment, made specifically to accommodate an employee's physical limitations due to work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

⁴ 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020).

⁵ *Id.*

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability from work for the period September 25, 2014 through July 14, 2015 causally related to the accepted employment conditions.

First, the Board notes that appellant did not allege, and the evidence does not establish, a change in the nature and extent of appellant's light-duty work requirements. Additionally, there is no indication in the record that the employing establishment withdrew a light-duty work assignment. The remaining issue is whether the medical evidence demonstrated a worsening of appellant's accepted bilateral foot conditions such that she could not perform limited-duty work.

After returning to part-time limited-duty work on May 22, 2010, appellant again sought medical treatment from Dr. Kaminsky beginning on July 24, 2014. Thereafter, Dr. Kaminsky diagnosed chronic tarsal tunnel syndrome, chronic plantar fasciitis, and chronic ankle and foot pain. On August 19, 2014 she provided permanent work restrictions. Appellant also sought treatment October through December 2014. In a December 16, 2014 form report, Dr. Kaminsky diagnosed plantar fasciitis as well as tarsal tunnel syndrome and found that appellant was totally disabled from September 25, 2014 through January 9, 2015. She did not, however, offer an opinion on causal relationship between appellant's claimed disability and factors of her federal employment. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.⁹ As such, these reports are of no probative value and do not establish appellant's disability claim.

In a series of reports, she attributed appellant's disability from work to chronic changes from her long-term tarsal tunnel syndrome. Dr. Kaminsky noted that appellant's symptoms of pain in the right second and third intermetatarsal spaces were consistent with pain that could radiate from tarsal tunnel syndrome. She also listed appellant's findings on physical examination

⁶ *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *J.M.*, Docket No. 19-1517 (issued January 29, 2020); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

⁸ *Id.*

⁹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

including positive Tinel's sign of the tarsal tunnel bilaterally and pain upon palpation of the medial tarsal tunnel, flexor hallucis brevis, and the arch. The Board notes that pain is a symptom, not a compensable medical diagnosis.¹⁰ Dr. Kaminsky did not provide medical rationale supporting an objective worsening of the accepted conditions between September 25, 2014 and July 14, 2015 such that appellant could no longer perform her modified-duty position. The Board has held that reports are of limited probative value regarding causal relationship if they do not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment injuries.¹¹

In a February 22, 2016 attending form report, Dr. Kaminsky diagnosed chronic changes from long-term tarsal tunnel syndrome, including EMG findings, a positive Tinel's sign, and musculoskeletal swelling. She checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by employment activities and listed walking, standing and weight-bearing of postal equipment. Dr. Kaminsky found that she was totally disabled from September 25, 2014 through July 13, 2015. The Board has held that a report that addresses causal relationship with an affirmative checkmark, without medical rationale explaining how the employment injuries resulted in the period of disability, is of diminished probative value and insufficient to establish causal relationship.¹²

On August 5, 2014 Dr. Liddell noted that appellant had been unable to work because of increased symptoms. On physical examination he found a positive Tinel's sign on the dorsal of her feet bilaterally which may be intermediate dorsal cutaneous nerve or deep peroneal nerve distribution. Dr. Liddell also found a negative Tinel's sign over the tarsal tunnel bilaterally. However, he did not address whether appellant was disabled from work during the claimed period. As Dr. Liddell did not address the claimed dates of disability, his opinion is insufficient to establish her claim.¹³

Appellant also submitted diagnostic studies. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any period of disability.¹⁴ These reports are therefore insufficient to establish the claim.

¹⁰ *R.S.*, Docket No. 19-1131 (issued April 2, 2020).

¹¹ *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹² *J.B.*, Docket No. 18-1751, 19-0793 (issued May 6, 2019); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹³ *M.L.*, Docket Nos. 18-1058, 18-1224 (issued November 21, 2019); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

Appellant also submitted notes from Mr. Harthill, a physical therapist. As physical therapists are not considered physicians under FECA, his reports are insufficient to establish entitlement to compensation benefits.¹⁵

As the medical evidence of record is insufficient to establish a recurrence of disability from work for the period September 25, 2014 through July 14, 2015 causally related to the accepted employment conditions, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability from work for the period September 25, 2014 through July 14, 2015 causally related to the accepted employment conditions.

¹⁵ Section 8101(2) of FECA provides that a physician includes: “surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *J.B.*, *supra* note 12; *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board